



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

FILE

Date:

MAY 8 2000

IN RE: Applicant:

APPLICATION:

IN BEHALF OF APPLICANT:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

MAY 10 2000 - 01E211

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native of Venezuela and citizen of Nicaragua and claims dual nationality. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish that he was unable to return to the country of his nationality claimed at the time of his admission to the United States.

The record reflects that the applicant was issued a nonimmigrant visitor's visa by a consular officer in Caracas, Venezuela by presenting his Venezuelan passport on April 29, 1997. The applicant was admitted to the United States on May 4, 1997 as a nonimmigrant visitor and citizen and national of Venezuela. The applicant was issued a second nonimmigrant visitor's visa by a consular officer in Caracas by presenting his Venezuelan passport on October 28, 1998. The applicant was admitted to the United States on December 15, 1998 as a nonimmigrant visitor and citizen and national of Venezuela.

On appeal, the applicant states that the decision should be reversed due to human error. The applicant states that he was born in Nicaragua and he obtained Venezuelan citizenship through his wife, who was born in Venezuela. The applicant states that he cannot live in Nicaragua because he criticized the president of that nation. The applicant states that he believes he is still a citizen of Nicaragua because he grew up in that country and he still has his family living there.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Nicaragua is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since December 30, 1998. Any departure, not authorized by the Service,

including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

In Matter of Ognibene, 18 I&N Dec. 425 (Reg. Comm, 1983), it was held that in the case of a dual national alien nonimmigrant, the nationality claimed or established by him at the time of his entry into the United States must be regarded as his sole or operative nationality for the duration of his temporary stay in the United States.

The applicant was admitted to the United States upon his presentation of a Venezuelan passport thereby establishing the applicant as a national of Venezuela. Citizens of Venezuela are not eligible for temporary protected status.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.